

DGO 5.16
BASF Task Force recommendations and SFPD responses

#	Task Force Recommendation	SFPD response	SFPD explanation
R1	Revise Purpose statement to, " this order establishes procedures and guidelines for the preparation, review, service and return of search warrants. The purpose of the policy is to ensure all search warrants comply with the Fourth Amendment and statutory requirements, safeguard public and officer safety, and promote public trust. "	Recommendation has been fully included in draft.	Language now reads: "This order establishes policies and procedures for the preparation, review, service, and return of search warrants. The purpose of the policy is to ensure all search warrants comply with the Fourth Amendment and statutory requirements, safeguard peace officer and public safety, and promote public trust."
R2	"Peace officer", "officer" and "member" are all used. Would SFPD like consistency? In 5.01, "Member" was used 6 times, "Officer" was used 213 times.	Recommendation will not be included in draft.	Member is used throughout this general order to apply to all sworn members / in situations where no distinction in rank is needed. If "officer" is used, outside of a quote or the term "peace officer" it is in reference to the rank of officers or "Q2s." Terms such as officers/sergeants/lieutenants etc. were all purposefully used to differentiate rank when specifically talking about supervision/approval/review. To clarify, SFPD has added the language, "[t]he term "members," used throughout this Department General Order, refers to sworn members of the Department."
R3	Cite the CA Constitution? in POLICY section 5.16.02	Recommendation will not be included in draft.	The California Constitution is mentioned at the beginning of the paragraph. The Fourth Amendment is specifically quoted. The quoted language is not the exact language in the California Constitution and while it is similar to the Fourth Amendment, because it is not the exact language in the CA Constitution, the quote will not be attributed to the CA Constitution. Consistent with R1 - the focus is on the Fourth Amendment as it is the prevailing legal authority.
R4	Section 5.16.02 B: Change "should" to "shall" and add "promptly". B.8b it reads: " Absent a clear- exception specific exceptions to the requirement for a warrant, searches shall be conducted under the authority of a duly issued search warrant. Where doubt is present about whether an exception to the requirement of a warrant exists, members- should shall secure the person, place, or thing to be searched and promptly seek a search warrant. "	Recommendation will not be included in draft.	If there is doubt if a warrant exception applies, members have a number of options, they can speak to a supervisor, obtain more information, get a warrant, or make the decision not to conduct a search. SFPD does not want to give the impression that in every circumstance, members shall obtain a warrant. Given this, "should" was determined to be a more appropriate term.
R5	Strike "Probable cause is required to obtain a search warrant."	Recommendation will not be included in draft.	This is the standard to obtain a search warrant.
R6	5.16.03 Procedures For Search Warrant Application Preparation and Review	Recommendation will not be included in draft.	Current title of "Search Warrant Preparation and Review" clearly defines the section.
R7	Current Section 5.16.03 A: (now proposed as a preamble to the sections.) " If trained, members seeking search warrants may, and are encouraged to, draft their own search warrant affidavits. If the member does not have any training in search warrant preparation, or if the member is included on a Brady list, a Lieutenant shall designate a member with experience and training in drafting search warrants to assist or draft the member with drafting, or alternatively to draft the search warrant affidavits."	Recommendation will not be included in draft.	Members without formal training (e.g. detective school, ICI, etc.), under the supervision of an experienced member, may draft search warrants. Therefore, regardless of formal training, all members are encouraged to draft their own warrant affidavits. Being on a Brady list may affect the affiant's credibility which is why it is listed under 5.16.03C. Based on advice SFPD has received from the City Attorney's Office, this recommendation will not be included here.
R8	Include definition for "feasible" - either create a section for definitions or include under section 5.16.03	Recommendation will not be included in draft.	This DGO purposefully does not have a separate definition section. "Feasible" has a common sense definition for the purpose of this DGO and does not need to be defined.
R9	Section 5.16.03 A: ADD "If a member is included on a Brady list, a Lieutenant shall when feasible assign another member to protect the integrity of the search warrant application." The Brady list information should be included here to protect the veracity of the affiant and not cause the Magistrate to undertake an investigation into the nature of the Brady violation or invite challenges to the warrant in litigation.	Recommendation will not be included in draft.	Being on a Brady list may affect the Affiant's credibility which is why it is listed under 5.16.03C. Based on advice SFPD has received from the City Attorney's Office, this recommendation will not be included here.

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R10	Current Section 5.16.03 B: (now proposed as section 5.16.03 A) Members shall act in good faith and be truthful when writing affidavits. A member acts in good faith when that member exercises reasonable diligence in ensuring the affidavit is accurate and contains no material omissions or, misstatements, or misleading information and shall sign the affidavit under oath and penalty of perjury. Truthfulness is evaluated based on what the affiant knew at the time the affidavit is signed. A good faith mistake in preparing the affidavit is not untruthfulness. A member acts in good faith when that member exercises reasonable diligence in ensuring the affidavit is accurate and contains no material omissions or misstatements. Members shall sign the affidavit under oath and penalty of perjury.	Recommendation has been partially included in draft.	DGO now reads: " Members shall act in good faith and be truthful when writing affidavits and shall sign the affidavit under oath and penalty of perjury. A member acts in good faith when that member exercises reasonable diligence in ensuring the affidavit is accurate and contains no material omissions or misstatements. Truthfulness is evaluated based on what the affiant knew at the time the affidavit is signed. A good faith mistake in preparing the affidavit is not untruthfulness. " To the extent other changes were not adopted, the language in the draft was suggested by DPA and agreed to during extensive, productive, SPARKS meetings.
R11	p. 2 : Members shall include known exculpatory information and other information members would reasonably believe that could affect the probable cause determination by a magistrate. (See DGO 2.01 Rules of Conduct) SFPD should identify the provision of 2.01 referenced.	Recommendation will not be included in draft.	Much of the language in this section was proposed by DPA. DPA and SFPD agreed after extensive, productive, SPARKS meetings. SFPD was thoughtful in the way in which we referenced other DGOs given the revision process can change the specific sections / rules. DGO 2.01 is being revised and numbers are changing so SFPD has elected not to cite to any specific rules in 2.01.
R12	Strike "exculpatory"	Recommendation has been fully included in draft.	
R13	p. 2: include the following in list of examples of information that could affect the probable cause of a search warrant: <ul style="list-style-type: none"> • The existence of physical evidence or scientific testing that contradicts the factual summary in the affidavit. • Information concerning the timing of information received (staleness) • Information concerning prior searches, if any, relevant to the current application 	Recommendation has been partially included in draft.	Draft now reads: " Existence of physical evidence or scientific testing that contradicts contrary to witness identifications or descriptions of events. " " Information concerning when the Affiant received information or when events occurred. "
R14	We propose that members on the Brady list should be discouraged from drafting search warrants to preserve the integrity of the warrant application, but information pertaining to credibility must be disclosed.	Recommendation will not be included in draft.	Please refer to R7 and R9.
R15	The level of supervision varies throughout this DGO and should there be consistency? SFPD needs to establish consistency. Or at least be aware that sections reference different levels of supervision. We did not change this language, but noted that a variety levels of supervision are referenced.		The different levels of supervision were thoughtfully crafted throughout the DGO.
R16	p. 3 : The purpose for supervisory review and assessment is to: Ensure probable cause has been established and supported by specific facts. (The goal is to avoid boilerplate/conclusory language)	Recommendation has been fully included in draft.	
R17	p. 3: include "video conference" as an option for Lt. review of the facts of the warrant.	Recommendation has been fully included in draft.	
R18	p. 4: under "submission to the DA's Office or prosecuting agency" section, add: 1. Members should investigate whether the San Francisco District Attorney's Office is currently prosecuting any individual related to the warrant. If so, the warrant must be submitted to the prosecuting agency for review.	Recommendation will not be included in draft.	Based upon conversations with the District Attorney's Office regarding their capacity, this recommendation will not be included. The District Attorney's Office has indicated a concern over the number of warrants that will need to be reviewed (premises and certain special warrants) and their current capacity to do so. The District Attorney's Office has informed SFPD, DPA, BASF, and the Commission that additional attorney requisitions will be needed to meaningfully review search warrants. There remains a requirement to present some search warrants to the DA's Office and an encouragement to present all warrant applications.

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R19	<p>All search warrant applications, with the exception of warrants for blood draws pursuant to <i>Missouri v. McNeely</i> (2013) 569 US 141, shall be submitted to the San Francisco District Attorney's Office or the prosecuting agency for legal review and consultation. On search warrants where an expedited review is necessary, the presenting officer shall notify the Office of the District Attorney and/or a Division Chief of the application and expedited status to secure review within 60 minutes. All other search warrant applications shall be submitted to permit review within 24 hours. A Lieutenant may authorize direct submission to a Magistrate only if the District Attorney or prosecuting agency has failed to respond to the request for search warrant review within 24 hours or there are exigent circumstances where the evidence will be lost or destroyed and there are no other protective measures that can preserve the evidence. The name of the Lieutenant who authorized direct submission and the reason for the exigency shall be documented on the warrant application, the Chronological of Investigation and an incident report if applicable.</p>	<p>Recommendation will not be included in draft.</p>	<p>Based upon conversations with the District Attorney's Office regarding their capacity, this recommendation will not be included. There remains a requirement to present some search warrants to the DA's Office and an encouragement to present all warrant applications.</p>
R20	<p>Search warrants may be submitted to the District Attorney's Office through an on-call procedure as specified by the District Attorney or directly to a specific attorney or unit as specified by the District Attorney.</p>	<p>Recommendation has been partially included in draft.</p>	<p>Draft reads: "Search warrants may be presented to the District Attorney's Office through an on-call procedure as specified by the District Attorney or directly to a specific attorney or unit." The DA's procedures specify this.</p>
R21	<p>We agree that applying for a no-knock warrant should be included in the application section and the service portion should be separated out</p>	<p>Recommendation will not be included in draft.</p>	<p>The separation of sections into "special procedures - service" does not make sense given the sections that remain under it.</p>
R22	<p>Revise NO-KNOCK section: " Applying for NO-KNOCK Warrant. A "no-knock" warrant is a warrant signed by a magistrate, at the request of a peace officer, that authorizes officers to enter a premise without complying with knock notice requirements. A member may seek judicial authorization to conduct a "no knock" entry only if that member has reasonable grounds to believe at the time the warrant is sought, that knocking and announcing the officers' presence would create an imminent immediate threat of physical violence to officers and/or another person . Before seeking judicial authorization for a "no knock" entry, a member must first obtain approval from the Assistant Chief. SFPD shall not seek no-knock warrants solely to prevent the destruction of evidence. Members must document in an incident report, or a Chronological Report of Investigation , the justification for seeking a "no knock" warrant and shall identify the Assistant Chief that approved the application. The Tactical Unit shall be consulted regarding requests for a no-knock provision and information from the Tactical Unit shall be incorporated in the affidavit, if the Tactical Unit is requesting a no-knock provision. Authorization for no-knock must appear prominently on the face of the warrant.</p>	<p>Recommendation has been partially included in draft.</p>	<p>DGO now reads: A no-knock warrant is a warrant signed by a magistrate, at the request of a peace officer, that authorizes officers to enter a premises without complying with knock notice requirements. SFPD shall not seek no-knock warrants solely to prevent the destruction of evidence. Members may request a no-knock provision if specific facts contained within the affidavit provide that the member has reasonable grounds to believe that, at the time the warrant is sought, knocking and announcing would create an imminent threat of physical violence to the members executing the warrant and/or the public.</p> <p>This language change was is based on the federal standard and mirrors the language the DOJ has put out. No-knock always appears on the face of the warrant as the magistrate must specifically authorize it. The justification for the no-knock request is contained within the affidavit.</p>
R23	<p>From USDOJ (though we use the word "immediate" instead of "imminent". "Immediate" is the term used throughout 5.01. Note: The public defender has suggested a ban on No Knock warrants and there should be no exceptions.</p>	<p>Recommendation has been partially included in draft.</p>	<p>SFPD is adopting language from US DOJ. Immediate is a synonym of imminent. Immediate is happening right away, instantly, with no delay while imminent is about to happen, occur, or take place very soon, especially of something which won't last long. Given the context, imminent is more appropriate.</p>

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R24	<p>A search warrant shall be served between the hours of 7 a.m. and 10 p.m. as nighttime service of warrants increases the risk of harm danger to occupants and the officers. Additionally, and consistent with DGO 7.04 III D, when planning an arrest or search warrant, officers shall consider the ages and likely location of minors when determining the time, place and logistics of executing the arrest and/or search warrant and shall when feasible not serve search warrants if minors are likely to be present on the premises. Nighttime service is authorized only if the magistrate who signed the warrant determines there is “good cause” that the warrant may be served at any time of day or night. In evaluating whether “good cause,” exists, members shall prioritize safeguarding life, consider the safety of peace officers, occupants of premises (including minors if any), and the public. Members shall document the specific facts and reasons for a night service request, and whether minors are likely to be present in the affidavit of the warrant. Authorization for night service must appear prominently on the face of the warrant.</p>	<p>Recommendation has been partially included in draft.</p>	<p>SFPD believes that members should consider the ages and locations of youth in the application and execution of all search warrants. Therefore, a separate section was added, outside of "Night Service" that specifically states, "[w]hen planning a search warrant, member shall consider the ages and likely location of youth when determining the time, place, and logistics of executing the search warrant. (See DGO 7.04 Children of Arrested Parents)." The determination of "good cause" is specifically set forth in Penal Code section 1533 and is reflected in the draft. Night service always appears on the face of the warrant as the magistrate must specifically authorize it.</p>
R25	<p>strike "confidential" and add "information acquired in confidence"</p>	<p>Recommendation will not be included in draft.</p>	<p>SFPD believes it is the same thing and "confidential" is clearer.</p>
R26	<p>Sealed Portions - Add: Members shall not seek to seal more information than is necessary to protect the identity of a confidential source or other official information as defined by the Evidence Code sections 1040-1042</p>	<p>Recommendation will not be included in draft.</p>	<p>In R10, SFPD added in the language requiring members "act in good faith and be truthful in writing affidavits." That is what this recommendation speaks to. Because we are already telling members they must write affidavits, which necessarily includes requests for sealing, no-knock, night service etc., there is no reason to specifically state it here.</p>
R27	<p>Members shall provide judge with a Request and Order to Seal documenting the reasons for the request.</p>	<p>Recommendation will not be included in draft.</p>	<p>Sealing Orders are uniformed forms that members use. They contain, and members document, the legal basis for the request (e.g. official information or a confidential informant) but do not provide the reasons why. That information is privileged and contained within the sealed portion of the affidavit. It cannot be contained within the non-sealed Sealing Order.</p>
R28	<p>Sealed portions: Members shall not seek to seal information obtained from covert electronic surveillance by misrepresenting to the magistrate that is it information from a "confidential informant, a source, or a known investigative technique. The fact that such information came from electronic surveillance and did not come from another source including a human source is material and shall be disclosed to the magistrate.</p>	<p>Recommendation will not be included in draft.</p>	<p>This appears to be the wrong section for a concern over the misrepresentation of information as regardless of whether information is sealed or not, members must be truthful. In R10, SFPD added language that members shall act in good faith and be truthful. Therefore, this has already been addressed in a separate section.</p>
R29	<p>SEALED PORTIONS: We think this (any reference to Department Notices on sealing procedures) should be deleted as DGOs are to be updated and officers should not be relying on Departmental Notices/Bulletins, but on regularly updated DGOs</p>	<p>Recommendation has been fully included in draft.</p>	
R30	<p>p. 6: Section 5.16.05 PROCEDURES FOR SERVING AND RETURNING THE WARRANT - "A. All members, including non-uniformed officers, shall wear and activate BWCs during the execution of a search warrant."</p> <p>We understand that BWC DGO is being updated, but this needs to be included here. Especially because non-uniformed officers often serve warrants.</p>	<p>Recommendation has been partially included in draft.</p>	<p>Consistent with SFPD policy, members shall wear and activate BWCs while executing search warrant for premises, vehicles, or where members are interacting with the public.</p>
R31	<p>p. 6: "C. NOCK NOTICE: Knock notice is required before prior to securing a premise for a warrant unless a "no knock" warrant has been obtained under 5.16.04A. The knock notice requires that members knock or take action that is reasonably likely to alert the occupants of their presence, announce their identity and purpose, demand entry, and wait a reasonable amount of time before entry is made."</p>	<p>Recommendation has been fully included in draft.</p>	

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R32	p. 6 ADD: 1. Exigent circumstances involving immediate threat of physical violence arising at the time of service. Knock notice is not required unless a No Knock Warrant has been issued by the magistrate. If the immediate threat of violence to the officers or another person was unknown and reasonably could not have been known at the time the member secured judicial authorization and if, upon arrival, members become aware of reasonable grounds to believe at the time the warrant is served, that knocking and announcing the officers' presence would create an immediate threat of physical violence to officers and/or another person , facts that would constitute reasonable suspicion that compliance would be dangerous. Members shall still make reasonable efforts to announce their identity and purpose.	Recommendation has been partially included in draft.	If a member did not anticipate the need for a no-knock warrant and if, upon arrival, exigent circumstances arise such that knocking and announcing would create an imminent threat of physical violence to the members and/or the public, members may conduct a no-knock entry. Members shall still make reasonable efforts to announce their identity and purpose. Members shall document such necessity in an incident report. When encountering a non-compliant subject or a subject armed with a weapon other than a firearm, members shall when feasible, use de-escalation tactics. (See DGO 5.01 Use of Force). This language used comes from the Department of Justice and is used by federal law enforcement agencies.
R33	p. 7: ADD "2. Reporting. Members must document in an incident report or Chronological Report of Investigation, whether knock notice was given and the manner in which it was given. Members must also report when they fail to provide knock notice and document the justification for non-compliance which must be reasonable under the circumstances."	recommendation will not be included in draft.	The concern is when knock notice is not given, this will be documented in an incident report and on BWC. If notice is given, that too will be captured on BWC.
R34	p. 7: A. Members should shall exercise reasonable care in executing a search warrant to minimize damage to property. To minimize property damage officers shall, when feasible, lawfully obtain keys or access codes to locked property subject to search. Members shall document in an incident report if property damage occurs during execution of a search warrant and the circumstances that led to the property damage.	Recommendation will not be included in draft.	Similar language was discussed with DPA during SPARKS meetings and the language within the draft was agreed upon. SFPD has separate policy on property damage and that policy is incorporating the additional language because members should always attempt to minimize property damage regardless of whether the search is pursuant to a warrant or not.
R35	p. 7: There is confusing use of minors and youth and DGO 7.01 does not mention Youth, so we (suggest to) use "minors"	Recommendation will not be included in draft.	DGO 7.01, currently under revision, uses the term "youth" which is appropriate. 5.16 has only used the term "youth" as well.
R36	p. 8 re providing copy of premises search warrant: There should be no exception to providing a redacted copy. The public has a right to know that a lawful search approved by a magistrate has occurred.	Recommendation has been fully included in draft.	
R37	p. 8 DELETE: "The search warrant should only be withheld from the person present at the premises, the target, or the residence if providing the redacted warrant would compromise other warrants or the investigation. If a premises search warrant is not provided, the reasons for withholding shall be documented in the Chronological of Investigation and an incident report if applicable."	Recommendation has been fully included in draft.	
R38	P. 9 SPECIAL MASTERS: REVISE TO READ (RED): California law requires courts to appoint special masters (independent attorneys) for search warrants seeking "documentary evidence" in the possession or control of lawyers (defined in Evidence Code section 950), physicians (defined in Evidence Code section 990), psychotherapists (defined in Evidence Code section 1010), and clergy (defined in Evidence Code section 1030), provided they are not reasonably suspected of criminal activity related to the documentary evidence sought. "Documentary evidence" includes but is not limited to: writings, documents, electronic files of any kind, computer software, computer code, blueprints, drawings, photographs, computer printouts, microfilms, X-rays, files, diagrams, ledgers, books, tapes, audio and video recordings, films, and papers of any type or description. "Documentary evidence" can contain privileged information that is protected by law. Members can obtain a warrant for this evidence if a specific special master protocol is followed."	Recommendation has been fully included in draft.	
R39	P. 12 ADD A SECTION TITLED "SEARCHES OF ELECTRONIC DEVICES AND MEDIA"	Recommendation will not be included in draft.	Electronic devices and media fall under CalECPA. There is already a section for CalECPA. Any additional language about warrants and searches that fall under CalECPA should go under that section.

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R40	P. 13 revise " Members are responsible for legal updates and when there is a discrepancy with this Department General Order, members shall adhere to the most current California and federal law. Members should seek advice and review from Department Legal and the San Francisco District Attorney's Office when requesting a search warrant related to any emerging technology. (See DGO-2.01 Rules of Conduct)	Recommendation will not be included in draft.	To the extent the a new law or court ruling comes out, that is inconsistent with this policy, members need to immediately follow the law. They are responsible for changes in the law prior to DGOs being updated.
R41	p. 13 ADD NEW LANGUAGE: 1. If a member does not have any training in search warrant preparation for electronic devices or media, a Lieutenant shall designate a member with experience and training in drafting such search warrant applications to assist or draft the search warrant affidavit.	Recommendation will not be included in draft.	This is already contained in 5.16.03. This is true for every type of search warrant which is why this language was placed at the beginning of the DGO.
R42	P. 13 ADD NEW LANGUAGE 2. All search warrant applications for electronic devices and media shall be submitted to the San Francisco District Attorney's Office or the prosecuting agency for legal review. Members shall document, in the search warrant affidavit, incident report, or the Chronological of Investigation, if the District Attorney's Office or prosecuting agency has been consulted.	Recommendation will not be included in draft.	The requirements for DA review of search warrants, as set forth in the current draft of 5.16, were drafted in consultation with the District Attorney's Office. The District Attorney's Office has indicated a concern over the number of warrants that will need to be reviewed (premises and certain special warrants) and their current capacity to do so. The District Attorney's Office has informed SFPD, DPA, BASF, and the Commission that additional attorney requisitions will be needed to meaningfully review search warrants.
R43	P. 13 ADD NEW LANGUAGE 3. When drafting a search warrant application for an electronic device or media, the member should consider whether the device itself or the media is evidence of a crime, contraband, fruits of a crime, or instrumentalities of a crime. The search warrant application shall describe with particularity the electronic device or media to be seized and searched. The search warrant application must disclose the actual risks of destruction of information as well as prior efforts to seize that information in other judicial fora, if any.	Recommendation has been partially included in draft.	CalECPA section already references that members need to comply with CalECPA including particularity requirements. SMEs agree that risks of destruction of information (data or devices) is not known without manipulation of the device and CalECPA legally precludes that prior to obtaining a warrant. Therefore, that information is often not known at the time of the search warrant application.
R44	P. 13 ADD NEW LANGUAGE 4. In some limited circumstances, off-site search of an electronic device or media may be practically necessary due to, for example, the volume of information to be searched, encrypted information, or the time-consuming nature of forensic examination. When an off-site search is necessary, Members shall seek authorization in the search warrant application from the magistrate for an off-site search, and explain the specific facts and reasons that justify the request. Members shall conduct any off-site search and seizure of electronic devices and media in diligent manner and in a reasonable amount of time. Members shall document the manner of any off-site search and seizure in an incident report or chronology.	Recommendation will not be included in draft.	Given the technological capabilities, the majority of electronic devices must be searched off-site. Currently, SFPD does not have the capability to search most devices on-site. To the extent that SFPD could search a device on-site, whether or not additional off-site searching is needed is known at the time of the application of the warrant. The amount of time it takes to search devices is dependent on a number of factors outside the control of SFPD members. CalECPA is specific as to the warrant requirements that are set forth in this draft.
R45	P. 13 ADD NEW LANGUAGE 5. Searches and seizures of electronic devices and media are highly intrusive and often involve review of information that is within the scope of the search warrant commingled with information that is private and not within the scope of the warrant. In such circumstances, Members shall seek authorization in the search warrant application from the magistrate to utilize a search protocol to minimize the examination and seizures of files that do not constitute evidence of a crime, contraband, fruits of a crime, or instrumentalities of a crime. The segregation and redaction of material outside the scope of the warrant must be completed by specially trained Department personnel that are not involved in the underlying investigation, or by an independent third party. If the segregation is to be done by Department personnel, the warrant application must guarantee that they will not disclose to the investigators any information other than that which is the target of the warrant.	Recommendation has been partially included in draft.	Given the limited recourses and personnel assigned to the Multimedia Evidence Unit within SFPD, as well as the forensic examination assistance by federal and state regional labs, a requirement of third party examination is not feasible at this time. SFPD acknowledges that when feasible, members should always utilize techniques designed to promote privacy interest in the examination of materials. Therefore, SFPD added the following language: "Searches of electronic devices and media may involve the review of material that is within the scope of search warrant commingled with information that is private and not within the parameters of the warrant. When feasible, members should use an independent third party, specially trained Department personnel, or members not associated with the investigation for the separation of material outside the scope of the search warrant. Members shall make reasonable efforts to minimize the examination of files outside the scope of the search warrant."

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R46	P. 14 ADD NEW SECTION: "GEO-FENCING" SEARCH WARRANT APPLICATIONS. Geo-fencing search warrants, which allow law enforcement to search a database for all active electronic devices within a particular area at a particular time, are highly disfavored because they appear to be general warrants that are prohibited by the Fourth Amendment."	Recommendation will not be included in draft.	This appears to be an overbroad description of geofence warrants, and is inconsistent with court rulings and the continued issuance of these warrants across the country. No court has ruled that geofence warrants, categorically, violate the Fourth Amendment.
R47	P. 14 : We believe geo-fencing likely violates the Fourth Amendment. Is SFPD applying for geo-fencing warrants? If so, at a minimum, we believe the following restrictions should be applied: .1. Geo-fencing search warrant applications are highly disfavored and must be used only as a last resort: only after it is clear that traditional search warrants cannot be obtained or would be ineffective, and all other investigative techniques to find the information sought in geo-fencing warrant have been exhausted. 2. Geo-fencing search warrant applications must be approved by a Deputy Chief and the District Attorney's Office. 3. Department Legal and the District Attorney's Office must supervise the process of data review set forth below for executing geo-fencing search warrants. 4. Geo-fencing search warrant applications and any issued geo-fencing search warrants must not be sealed as a matter of practice, absent an appropriate showing of good cause, as set forth above. 5. For geo-fencing search warrant applications user notice must be given consistent with Cal ECPA. 6. All geo-fencing search warrant applications must: a) Be narrowly tailored in scope (time, geographic scope, users/devices/applications/services targeted, and information sought) and articulate specific facts to establish probable cause as to the entire scope of the search, including each parameter. b) Require the Member to request and review only anonymized data in first instance. c) Require the Member to request and review additional false positive screening for particular information of interest in order to narrow prior to de-anonymizing data. d) Require the Member to articulate specific facts to justify de-anonymizing any information sought. 7. The anonymized results of any geo-fencing search warrant must be destroyed as soon as feasible; and, all results must be destroyed as soon as feasible following the final conclusion of all investigation and proceedings.	Recommendation has been partially included in draft.	Members seeking geofence warrants, also known as reverse location warrants, shall comply with the provisions and requirements of CalECPA. Geofence warrants should be used only after it is clear that traditional search warrants cannot be obtained or would be ineffective. Geofence warrants shall set forth probable cause and particularity for the search and be narrowly tailored in scope (location, geography, and time). Members shall utilize the multi-warrant process and request anonymized data first. Members shall articulate specific facts to justify de-anonymizing any data in follow-up warrants. Members who do not have specific training in the legal requirements and multi-warrant process for obtaining geofence warrants shall consult with the Special Investigations Division (SID) prior to the submission of a geofence warrant to a magistrate. Members shall present and consult with the San Francisco District Attorney's Office or the prosecuting agency on all geofence warrants prior to judicial review. This language was specifically drafted based upon conversations with SMEs, a review of case law, and an understanding of the specific and detailed analysis by service providers prior to responding to a signed search warrant.
#	DPA Recommendation	SFPD response	SFPD explanation
R48	10/24/22: Witness identifications or lack of identifications of the suspect, the suspect vehicle, or suspect's property.	Recommendation has been partially included in draft.	Witness identifications or lack of identifications of a suspect, vehicle, or property. Relevant identifications might go beyond property or vehicles associated with the suspect so this language is intended to be broader.
R49	10/24/22: Information concerning when the affiant received information or when events occurred.	Recommendation has been fully included in draft.	
R50	10/24/22: Ensure appropriate procedures were utilized to verify the target location.	Recommendation has been fully included in draft.	
R51	10/24/22: A Lieutenant may authorize direct submission to a magistrate if there are exigent circumstances and/or instances where a delay would cause the evidence to be destroyed or lost, or in other exigent necessary circumstances	Recommendation will not be included in draft.	Understanding the concern with the vagueness of "in other necessary circumstances," SFPD has set forth the specific circumstances which would allow a Lieutenant to consider direct submission to a magistrate. Members shall present and consult with the San Francisco District Attorney's Office or the prosecuting agency on all premises search warrants. A Lieutenant may authorize direct submission to a magistrate if there are exigent circumstances, instances where a delay would cause the evidence to be destroyed or lost, the District Attorney's Office or prosecuting agency has not responded within a reasonable amount of time, or presentation and consultation is not feasible given the nature of the sealed portion of the affidavit.

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#	Task Force Recommendation	SFPD response	SFPD explanation
R52	10/24/22: Members shall provide a copy of a premises search warrant, excluding the affidavit, to: (1) a person present at the premises where the search warrant is executed; or (2) the target of the investigation; or (3) in the absence of any person, it may be left at the premises that was searched. If providing the search warrant would compromise other warrants or investigations, the search warrant should first be redacted .	Recommendation has been fully included in draft.	
R53	10/24/22: GEOFENCE WARRANTS. Members seeking geofence warrants, also known as reverse location warrants, shall comply with the provisions and requirements of CalECPA. Geofence warrants should be used only after it is clear that traditional search warrants cannot be obtained or would be ineffective. Geofence warrants shall be narrowly tailored in scope (location, time, geography, user, devices, and information sought). Members shall utilize the multi-step process and request anonymized data first. Members shall articulate specific facts to justify de-anonymizing any data in follow-up warrants. The Department must destroy the anonymized results of any geofence search warrant as soon as feasible following the conclusion of all investigation and legal proceedings.	Recommendation has been partially included in draft.	Geofence warrants shall set forth probable cause and particularity for the search and be narrowly tailored in scope (location, geography, and time). Because this sentence speaks to Step 1 in the process, where users and devices are unknown, adding that language would be confusing to members. As to the destruction of data, Penal Code section 1536 mandates that property taken pursuant to a warrant be retained until further order of the court. Therefore, absent a court order, SFPD cannot destroy the data. Given the anonymized data may be both inculpatory or exculpatory, SFPD does not support a recommendation to destroy evidence, unless required by law.
R54	10/24/22: In all cases involving a geofence warrant, members shall consult with the San Francisco District Attorney's Office or the prosecuting agency prior to judicial review.	Recommendation has been fully included in draft.	Draft now reads: "Members shall present and consult with the San Francisco District Attorney's Office or the prosecuting agency on all geofence warrants prior to judicial review."
R55	10/31/22: DPA's position is that, at a minimum, SFPD officers should submit premises search warrants, special master's warrants, and geofence warrants to the DA's office for review not just consult with them as this new language suggests.	Recommendation will not be included in draft.	
R56	10/31/22: DPA also disagrees that officers should be able to dispense with legal review when consultation is not feasible given the nature of the sealed portion of the affidavit . Ms. Caywood spoke to several career DA's each more than 25 years' experience apiece who informed me that the DA review is critical when you have sealed affidavits with sensitive information. DPA agrees.	Recommendation will not be included in draft.	SFPD has requested DPA provided both SFPD and SFDA information on who these individuals were in order to asses their knowledge and credibility on the subject in order to fully respond. Nevertheless, SFPD believes there are situations when the security risk to a confidential informant might be so serious or the District Attorney's Office has a potential conflict such that review is deemed to be inappropriate given the nature of the sealed portion. This limited and specific exception is appropriate to capture these situations. A Lieutenant would need to approve it and ultimately the decision on whether or not to approve a warrant rests solely with the reviewing magistrate.

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#	Task Force Recommendation	SFPD response	SFPD explanation
R57	10/31/22: DPA recommends SFPD "submit" and not "consult" with the DA's Office on warrants	Recommendation will not be included in draft.	<p>SFPD believes a policy that, "members shall present and consult with the San Francisco District Attorney's Office or the prosecuting agency," is appropriate. There are a number of ways that warrants are reviewed including, but not limited to: SFPD members may email the warrant to a specific DA or the DA's Office; a member may call a DA and discuss the warrant which may include reading it to the DA, depending on the time of day and or circumstances; a member might bring an actual copy of the warrant to the DA's Office to be reviewed; or a DA might be present in a specific SFPD unit and review the warrant there. These forms of presentation are currently in place, have been for years, and work for both SFPD and the District Attorney's Office.</p> <p>In order to capture all of the different, and acceptable, ways in which warrants are shown to the DA's Office, SFPD has determined that the appropriate term is "present." "Submit" is defined as, "to present or propose to another for review, consideration, or decision," also: "to deliver formally." Using the term "submit" would require SFPD members to formally deliver a copy of the warrant. This does not make sense given the various ways in which warrants may be presented to the DA's Office. If DA reviews a warrant in Homicide, should SFPD be required to simultaneously email it to the DA's Office? It is important to note that there is not a secure mechanism to transmit warrants. If a member brings a hard copy of a warrant to be review, shall the member leave it with the DA's Office? In light of this, SFPD has determined that "present" is appropriate.</p> <p>The concern that a policy requiring members to "present and consult" on warrants would make it too easy to "edit or spin facts" is misguided. First, it logically would not make sense for an SFPD member to "spin or edit" facts to the DA's Office given the magistrate would read the "unspun" and "unedited" facts when the reviewing the warrant. This would not benefit an SFPD member in any way. Secondly, SFPD is unaware of any situation, DPA complain, IA case, or court case where this has happened or ever been an issue. Third, SFPD has policies, particularly DGO 2.01, that would capture the potential misconduct that would occur if a member were to "spin or edit facts" in order to receive a prosecutor's support of a warrant.</p> <p>The requirements for DA review of search warrants, as set forth in the current draft of 5.16, were drafted in consultation with the District Attorney's Office. The District Attorney's Office has indicated a concern over the number of warrants that will require consultation (premises and certain special warrants) and their current capacity to do so. The District Attorney's Office has informed SFPD, DPA, BASF, and the Commission that additional attorney requisitions will be needed to meaningfully review search warrants and any policy requiring consultation on SFPD search warrant must be predicated upon additional budgetary funding.</p>

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#	Task Force Recommendation	SFPD response	SFPD explanation
R 58	<p>2/13/23: 1.) 5.16.03.G.1 – Premises Warrants. (Page 3.) Instead of “members shall present and consult with the SF District Attorney or prosecuting agency” DPA recommends the following: “Members shall submit the search warrant for review to the SF District Attorney or prosecuting agency.”</p> <p>Rationale: Prosecutors should review the actual search warrant instead of allowing officers to phone in a search warrant summary. With the latter, it is too easy to edit or spin facts. An actual review will lead to a better review which is essential for premises warrants since the government intrusion is so great.</p>	Recommendation will not be included in draft.	<p>SFPD believes a policy that, "members shall present and consult with the San Francisco District Attorney’s Office or the prosecuting agency," is appropriate. There are a number of ways that warrants are reviewed including, but not limited to: SFPD members may email the warrant to a specific DA or the DA’s Office; a member may call a DA and discuss the warrant which may include reading it to the DA, depending on the time of day and or circumstances; a member might bring an actual copy of the warrant to the DA’s Office to be reviewed; or a DA might be present in a specific SFPD unit and review the warrant there. These forms of presentation are currently in place, have been for years, and work for both SFPD and the District Attorney’s Office.</p> <p>In order to capture all of the different, and acceptable, ways in which warrants are shown to the DA’s Office, SFPD has determined that the appropriate term is "present." "Submit" is defined as, "to present or propose to another for review, consideration, or decision," also: "to deliver formally." Using the term "submit" would require SFPD members to formally deliver a copy of the warrant. This does not make sense given the various ways in which warrants may be presented to the DA’s Office. If DA reviews a warrant in Homicide, should SFPD be required to simultaneously email it to the DA’s Office? It is important to note that there is not a secure mechanism to transmit warrants. If a member brings a hard copy of a warrant to be review, shall the member leave it with the DA’s Office? In light of this, SFPD has determined that "present" is appropriate.</p> <p>The concern that a policy requiring members to “present and consult” on warrants would make it too easy to “edit or spin facts” is misguided. First, it logically would not make sense for an SFPD member to “spin or edit” facts to the DA’s Office given the magistrate would read the “unspun” and “unedited” facts when the reviewing the warrant. This would not benefit an SFPD member in any way. Secondly, SFPD is unaware of any situation, DPA complain, IA case, or court case where this has happened or ever been an issue. Third, SFPD has policies, particularly DGO 2.01, that would capture the potential misconduct that would occur if a member were to “spin or edit facts” in order to receive a prosecutor’s support of a warrant.</p> <p>The requirements for DA review of search warrants, as set forth in the current draft of 5.16, were drafted in consultation with the District Attorney’s Office. The District Attorney’s Office has indicated a concern over the number of warrants that will require consultation (premises and certain special warrants) and their current capacity to do so. The District Attorney’s Office has informed SFPD, DPA, BASF, and the Commission that additional attorney requisitions will be needed to meaningfully review search warrants and any policy requiring consultation on SFPD search warrant must be predicated upon additional budgetary funding.</p>
R 59	<p>2/13/23 2.) 5.16.03.G.1 – Premises Warrants involving informants. (Page 3.) DPA recommends deleting the clause exempting premises warrants from prosecutorial review “when presentation and consultation is not feasible given the nature of the sealed portion of the affidavit.” By this language, the Department seeks an exception to the requirement that premises warrants be reviewed by the prosecutor before it is submitted to a magistrate in cases involving confidential informants. The DPA disagrees because the law around informants is extremely complex with a high likelihood that officers will make mistakes. The handling of informants is also an area with a unique potential for abuse. There is no type of warrant where a legal review prior to submission is more critical given that the Department has no DGO on handling informants and the informant’s manual is outdated. To protect the confidentiality of informants, members can transmit the search warrant to the prosecutor in person or through a secure portal.</p>	Recommendation will not be included in draft.	<p>This section does not categorically exempt SFPD members from the requirement of DA consultation in all cases where a confidential informant is used. A Lieutenant would need to approve direct submission and ultimately, the decision on whether or not to approve a warrant rests solely with the reviewing magistrate. That being said, SFPD believes there are situations when the security risk to a confidential informant might be so serious or separately that the District Attorney’s Office has a potential conflict such that review is deemed to be inappropriate given the nature of the sealed portion. This limited and specific exception is appropriate to capture these situations. This is particularly important given the DA’s Office does not have a secure portal to provide warrant.</p> <p>The requirements for DA review of search warrants, as set forth in the current draft of 5.16, were drafted in consultation with the District Attorney’s Office. The District Attorney’s Office has indicated a concern over the number of warrants that will require consultation (premises and certain special warrants) and their current capacity to do so. The District Attorney’s Office has informed SFPD, DPA, BASF, and the Commission that additional attorney requisitions will be needed to meaningfully review search warrants and any policy requiring consultation on SFPD search warrant must be predicated upon additional budgetary funding.</p>

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#	Task Force Recommendation	SFPD response	SFPD explanation
R 60	<p>2/13/23 3.) 5.16.06.A – Warrants involving Special Masters (Page 7.) Same edit as R 58 Instead of “members shall present and consult with the SF District Attorney or prosecuting agency prior to judicial review, that section should read “members shall submit the search warrant for review to the SF District Attorney or prosecuting agency prior to judicial review.” Same rationale as R. 58</p>	<p>Recommendation will not be included in draft.</p>	<p>SFPD believes a policy that, "members shall present and consult with the San Francisco District Attorney’s Office or the prosecuting agency," is appropriate. There are a number of ways that warrants are reviewed including, but not limited to: SFPD members may email the warrant to a specific DA or the DA’s Office; a member may call a DA and discuss the warrant which may include reading it to the DA, depending on the time of day and or circumstances; a member might bring an actual copy of the warrant to the DA’s Office to be reviewed; or a DA might be present in a specific SFPD unit and review the warrant there. These forms of presentation are currently in place, have been for years, and work for both SFPD and the District Attorney’s Office.</p> <p>In order to capture all of the different, and acceptable, ways in which warrants are shown to the DA’s Office, SFPD has determined that the appropriate term is "present." "Submit" is defined as, "to present or propose to another for review, consideration, or decision," also: "to deliver formally." Using the term "submit" would require SFPD members to formally deliver a copy of the warrant. This does not make sense given the various ways in which warrants may be presented to the DA’s Office. If DA reviews a warrant in Homicide, should SFPD be required to simultaneously email it to the DA’s Office? It is important to note that there is not a secure mechanism to transmit warrants. If a member brings a hard copy of a warrant to be review, shall the member leave it with the DA’s Office? In light of this, SFPD has determined that "present" is appropriate.</p> <p>The concern that a policy requiring members to “present and consult” on warrants would make it too easy to “edit or spin facts” is misguided. First, it logically would not make sense for an SFPD member to “spin or edit” facts to the DA’s Office given the magistrate would read the “unspun” and “unedited” facts when the reviewing the warrant. This would not benefit an SFPD member in any way. Secondly, SFPD is unaware of any situation, DPA complain, IA case, or court case where this has happened or ever been an issue. Third, SFPD has policies, particularly DGO 2.01, that would capture the potential misconduct that would occur if a member were to “spin or edit facts” in order to receive a prosecutor’s support of a warrant.</p> <p>The requirements for DA review of search warrants, as set forth in the current draft of 5.16, were drafted in consultation with the District Attorney’s Office. The District Attorney’s Office has indicated a concern over the number of warrants that will require consultation (premises and certain special warrants) and their current capacity to do so. The District Attorney’s Office has informed SFPD, DPA, BASF, and the Commission that additional attorney requisitions will be needed to meaningfully review search warrants and any policy requiring consultation on SFPD search warrant must be predicated upon additional budgetary funding.</p>

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#	Task Force Recommendation	SFPD response	SFPD explanation
R 61	<p>2/13/23 4.) 5.16.06.K – Geofence Warrants (Page 2.) Instead of “members shall present and consult with the SF District Attorney or prosecuting agency” DPA recommends the following: “Members shall submit the search warrant for review to the SF District Attorney or prosecuting agency.” Same rationale as R.58.</p>	<p>Recommendation will not be included in draft.</p>	<p>SFPD believes a policy that, "members shall present and consult with the San Francisco District Attorney's Office or the prosecuting agency," is appropriate. There are a number of ways that warrants are reviewed including, but not limited to: SFPD members may email the warrant to a specific DA or the DA's Office; a member may call a DA and discuss the warrant which may include reading it to the DA, depending on the time of day and or circumstances; a member might bring an actual copy of the warrant to the DA's Office to be reviewed; or a DA might be present in a specific SFPD unit and review the warrant there. These forms of presentation are currently in place, have been for years, and work for both SFPD and the District Attorney's Office.</p> <p>In order to capture all of the different, and acceptable, ways in which warrants are shown to the DA's Office, SFPD has determined that the appropriate term is "present." "Submit" is defined as, "to present or propose to another for review, consideration, or decision," also: "to deliver formally." Using the term "submit" would require SFPD members to formally deliver a copy of the warrant. This does not make sense given the various ways in which warrants may be presented to the DA's Office. If DA reviews a warrant in Homicide, should SFPD be required to simultaneously email it to the DA's Office? It is important to note that there is not a secure mechanism to transmit warrants. If a member brings a hard copy of a warrant to be review, shall the member leave it with the DA's Office? In light of this, SFPD has determined that "present" is appropriate.</p> <p>The concern that a policy requiring members to “present and consult” on warrants would make it too easy to “edit or spin facts” is misguided. First, it logically would not make sense for an SFPD member to “spin or edit” facts to the DA’s Office given the magistrate would read the “unspun” and “unedited” facts when the reviewing the warrant. This would not benefit an SFPD member in any way. Secondly, SFPD is unaware of any situation, DPA complain, IA case, or court case where this has happened or ever been an issue. Third, SFPD has policies, particularly DGO 2.01, that would capture the potential misconduct that would occur if a member were to “spin or edit facts” in order to receive a prosecutor’s support of a warrant.</p> <p>The requirements for DA review of search warrants, as set forth in the current draft of 5.16, were drafted in consultation with the District Attorney's Office. The District Attorney's Office has indicated a concern over the number of warrants that will require consultation (premises and certain special warrants) and their current capacity to do so. The District Attorney's Office has informed SFPD, DPA, BASF, and the Commission that additional attorney requisitions will be needed to meaningfully review search warrants and any policy requiring consultation on SFPD search warrant must be predicated upon additional budgetary funding.</p>